

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: OFFICE OF CONSUMER ADVOCATE, Complainant, vs. TCPB MARKETING, LTD., Respondent.	DOCKET NO. FCU-04-51
---	----------------------

**ORDER DOCKETING FOR FORMAL PROCEEDING AND
SETTING DEADLINE FOR RESPONSE**

(Issued October 29, 2004)

On October 15, 2004, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a petition asking that the Board review the proposed resolution in Docket No. C-04-213 involving TCPB Marketing, Ltd. (TCPB), and consider the possibility of assessing a civil penalty pursuant to Iowa Code § 476.103(4)"a." Based upon the record assembled in the informal complaint proceedings, the events to date can be summarized as follows:

On September 16, 2004, Denise Masker of Atlantic, Iowa, submitted a complaint to the Board alleging that the long distance telephone company for Masker Plumbing, Heating & Cooling (Masker) was changed without authorization. Ms.

Masker disputed charges received from TCPB, which she thought exceeded what she would have been charged by Qwest Corporation (Qwest), Masker's preferred carrier.

Board staff identified the matter as C-04-213 and, pursuant to Board rules, on September 17, 2004, forwarded the complaint to TCPB for response within ten days. TCPB filed a response with the Board on September 27, 2004, indicating that on or about May 6, 2004, an independent sales agent solicited the order to change Masker's long distance service to TCPB. TCPB stated that the company it used to verify the switch was Vericom, Inc. (Vericom). TCPB stated that, according to Vericom's records, Ms. Masker authorized the change in service. TCPB explained that because of a dispute with Vericom, it was not able to provide a copy of the verification recording. TCPB noted that it issued Masker a credit in the amount of \$72.66 for charges billed on behalf of TCPB, deactivated Masker from its service, and placed Masker on TCPB's "do not solicit" list.

On October 7, 2004, Board staff issued a proposed resolution concluding that because TCPB did not provide proof of authorization, TCPB's change of Masker's long distance carrier was technically a slam. Staff found that the credits issued by TCPB and additional credits issued by Qwest sufficiently resolved the matter.

In its October 15, 2004, petition, Consumer Advocate asserts the proposed resolution should be augmented with a civil penalty because credits alone will not stop slamming violations. Consumer Advocate asserts that civil penalties are necessary to ensure compliance and deter future violations. Consumer Advocate

also disputes Board staff's characterization of TCPB's violation as "technical," noting that the statute does not distinguish between "technical" or "inadvertent" violations. TCPB has not responded to Consumer Advocate's petition.

The Board has reviewed the record to date and finds there is sufficient information to warrant further investigation into this matter. The Board will delay establishing a procedural schedule and allow TCPB an opportunity to respond to the allegations raised in Consumer Advocate's petition.

IT IS THEREFORE ORDERED:

1. The "Petition for Proceeding to Consider Civil Penalty" filed by the Consumer Advocate Division of the Department of Justice on October 15, 2004, is granted. File C-04-213 is docketed for formal proceedings, identified as Docket No. FCU-04-51.

2. TCPB Marketing, Ltd., is directed to file a response to Consumer Advocate's petition on or before November 29, 2004.

UTILITIES BOARD

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 29th day of October, 2004.